

WAYNE COOK

IBLA 81-995

Decided October 19, 1981

Appeal from decision of California State Office, Bureau of Land Management, which declared unpatented mining claims abandoned and void. CA MC 52650.

Affirmed, as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Where mining claims were located in 1940 and copies of the official record of the notices of location were not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Administrative Authority: Generally--Federal Employees and Officers: Authority to Bind Government  
Reliance upon erroneous or incomplete information provided by Federal employees does not create any rights not authorized by law.

4. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an

instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

5. Administrative Authority: Generally--Constitutional Law:  
Generally--Federal Land Policy and Management Act of 1976:  
Recordation of Affidavit of Assessment Work or Notice of Intention  
to Hold Mining Claim--Mining Claims: Recordation

Department of the Interior, as an agency of the executive branch of the Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

APPEARANCES: Leonard A. Worthington, Esq., San Francisco, California, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Wayne Cook appeals the July 23, 1981, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Peg Leg #1, #4, #5, #6, #9, #10, and #11 placer mining claims, CA MC 52650, abandoned and void because evidence of assessment work or a notice of intention to hold the claims for the period September 1, 1979, through September 1, 1980, was not filed on or before December 30, 1980, as required by 43 CFR 3833.2-1. Additionally, the decision stated that no copies of the notice of location had been filed.

On October 18, 1979, Cook had submitted to BLM a map showing the physical location of the Peg Leg claims, in secs. 33 and 34, T. 12 N., R. 2 W., San Bernardino meridian; with a marginal notation that the claims had been located in 1940 by one Jack Himes and quitclaimed to him in 1961. A fee of \$5 accompanied the map.

Appellant states that he has been working on these claims for 24 years and has done the assessment work every year with the proof of such labor being recorded in San Bernardino County, California. He suggests that he was advised by a BLM employee that such recordation in the county was all that he was required to do. He asserts that he

had visited the BLM district office in Riverside, California, and discussed the mining claims with a BLM engineer who did not tell him of the requirement to file his proof of labor with the BLM office in Sacramento. Counsel for appellant has raised questions about the legality of any change in the mining laws without notice to mining claimants of record, and specifically asserts recordation of the proof of labor in the records of San Bernardino County on August 25, 1980, satisfies the law.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owners of unpatented mining claims located on public land on or before October 21, 1976, to file in the proper BLM office within 3 years after approval of the Act (*i.e.*, on or before October 22, 1979), a copy of the official affidavit of assessment work or notice of intention to hold the claims, that was recorded with the appropriate county office, and prior to December 31 of each year thereafter a copy of the recorded proof of labor or of a notice of intention to hold the claims for each succeeding year. The section also requires that a copy of the official record of the notices of location for the claims also be filed with the proper office of BLM before October 22, 1979. The section further provides that failure to file such instruments, *i.e.*, notices of location and proof of labor, within the specified time periods shall be deemed conclusively to constitute an abandonment of the mining claims.

Implementing regulations are in 43 CFR 3833.1-2, 3833.2-1, and 3833.4. Section 3833.1-2(a) states that the notice of location for claims located on or before October 21, 1976, must be filed in the proper BLM office on or before October 22, 1979. "File" means "being received and date stamped by the proper BLM office." (43 CFR 1821.2-1 names the California State Office of BLM, 2800 Cottage Way, Sacramento, as the proper BLM office to receive instruments relating to unpatented mining claims located on public lands in California.) Section 3833.1-2(d) requires payment of a \$5 service charge for each notice of location of a mining claim. Section 3833.2-1 sets forth the requirements for filing evidence of annual assessment work, initially on or before October 22, 1979, for claims located on or before October 21, 1976, and on or before December 30 of each calendar year thereafter. Section 3833.4 states that failure to file any instrument required by section 3833.1-2 or section 3833.2-1 within the time periods prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

With his notice of appeal, appellant submitted copies of the notice of location for the Peg Leg claims, as recorded in San Bernardino County, California. The notices reflect that the claims were located in 1940. As the notices of location were not submitted to BLM for recordation on or before October 22, 1979, the Peg Leg claims should have been declared abandoned and void for that reason. Dell Warren, 54 IBLA 159 (1981). The BLM decision is modified to that extent. Furthermore, copies of recorded notices of location for several mining claims will

not be accepted by BLM for recordation if they are not accompanied by the service fee for each claim as required by 43 CFR 3833.1-2(d). Susan Mativo, 52 IBLA 134 (1981).

[2] The responsibility for complying with the recordation requirements of FLPMA rested with appellant. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976).

[3] Whether appellant was misdirected or misinformed by a BLM employee, as alleged, or whether he misunderstood the instructions, makes no difference. Reliance upon information or opinion of any employee of BLM cannot operate to vest any right not sanctioned by law. 43 CFR 1810.3(c).

[4] Arguments similar to those presented here were considered by the Board in Lynn Keith, supra, where we held

[t]he conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining, Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

[5] As for the constitutionality of section 314 of FLPMA, supra, appellant's challenge to the statute cannot be sustained here. The Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an Act of Congress is constitutional. Lynn Keith, supra; Alex Pinkham, 52 IBLA 149 (1981), and cases cited therein. Jurisdiction of such an issue is reserved exclusively to the judicial branch. However, to the extent that the recordation section of FLPMA has been considered by the courts, it has been upheld. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Douglas E. Henriques

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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C. Randall Grant, Jr.,  
Administrative Judge

